

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Qwest Corporation Petition for Declaratory	)	WC Docket No. 02-77
Ruling Concerning Wholesale DSL Services)		
and Section 251(c)(4) of the Act	)	

**REPLY COMMENTS OF VERIZON<sup>1</sup>  
ON PETITION FOR DECLARATORY RULING**

Qwest Corporation (“Qwest”) asks the Commission to declare that the bulk digital subscriber line (“DSL”) services it provides to an Internet Service Provider (“ISP”) – Microsoft Network, L.L.C. (“MSN”) – are not provided “at retail” and are not subject to the “avoided cost” resale discount requirements of 47 U.S.C § 251(c)(4). Qwest’s request is based on the Commission’s prior ruling – expressly affirmed by the D.C. Circuit – that “advanced services sold to Internet Service Providers for inclusion in a high-speed Internet service offering . . . are inherently different from advanced services made available directly to business and residential end-users, and as such, are not subject to the discounted resale obligations of section 251(c)(4).” *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 19,237, ¶ 3 (1999), *aff’d*, *Association of Communications Enterprises v. FCC*, 253 F.3d 29 (D.C. Cir. 2001)(“*Bulk DSL Order*”). The Commission’s determination was and continues to be sound from a public policy perspective because it “encourage[s] incumbents to offer advanced services to Internet Service Providers at the lowest possible price [who] . . . will

---

<sup>1</sup> The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A.

be able to package the DSL service with their Internet service to offer affordable, high-speed access to the Internet to residential and business consumers. As a result, consumers will ultimately benefit through lower prices and greater and more expeditious access to innovative, diverse broadband applications by multiple providers of advanced services.” *Id.*

Several commenters argue that Qwest’s sale of bulk DSL transport to MSN is not a wholesale transaction because Qwest provides support services for MSN’s retail sales of MSN’s Internet service. For example, the Minnesota Department of Commerce claims that Qwest “continue[s] to provide retail functions to consumers for a service tariffed as ‘wholesale’ . . . .” Minnesota DOC Comments at 6. *See also* Association of Communications Enterprises’ Comments at 6-7 (referring to Qwest’s “bulk DSL offerings which incorporate multiple retail functions”). These commenters are confusing two separate and independent transactions.<sup>2</sup>

The first transaction is Qwest’s sale of bulk DSL transport on a wholesale basis to MSN. By its terms, this transaction specifically excludes retail functions and support services. *See, e.g.,* Qwest’s FCC Tariff No. 1, Section 8.4.4 (purchaser “[m]ust deal directly with its end users and be solely liable with respect to all matters relating to the service, including marketing, ordering, technical support, billing and collections”). There is also no tariff requirement that the purchaser obtain any retail support services from Qwest.

---

<sup>2</sup> Verizon’s analysis of these transactions is based on the facts and information presented in Qwest’s petition for declaratory ruling.

The second transaction is MSN's retail sale of MSN's Internet service to end user customers. In this second transaction, MSN contracts with the end user customer for MSN's Internet service, MSN sets the price for MSN's Internet service, and MSN accepts responsibility for all retail functions, including marketing, sales, ordering, technical support, billing, collection and termination.

These two transactions are independent and involve different products. On the one hand, Qwest's wholesale transaction involves bulk DSL transport services. *See Bulk DSL Order* ¶ 5. On the other hand, MSN's retail transaction involves Internet services that MSN creates by combining Qwest's bulk DSL transport services with computer processing, information storage, protocol conversion, and routing to enable users to access Internet content and services. MSN's retail Internet services are classified as information services under the Communications Act. *See Bulk DSL Order* ¶ 17.

The only retail functions at issue here are those that Qwest performs as MSN's agent for MSN's retail Internet services. But MSN's retail Internet service is provided by MSN, not Qwest. And whether MSN chooses to provide customer care or other functions directly or by contracting with third parties, they remain services provided by MSN. Qwest cannot be required to make available for resale someone else's service.

The commenters are thus arguing that the retail support services Qwest provides for MSN's retail sale of MSN's Internet services somehow transform Qwest's sale of bulk DSL transport services on a wholesale basis into a retail transaction. In other words, they claim that Qwest is providing bulk DSL services to MSN "at retail" even though MSN is using those bulk DSL transport services as an input to create MSN's retail

Internet service that MSN provides to end user customers on a retail basis. This claim is completely unfounded.

The fact that Qwest provides support services under contract with MSN for MSN's retail sales of Internet services does not shift responsibility for marketing, billing or collection from MSN to Qwest. MSN remains fully liable for those retail functions even though it performs them through an agent. It makes no difference whether MSN hires its own employees to perform retail functions or hires an independent agent, such as Qwest, CompUSA or Sears. Qwest's sale of bulk DSL transport service is a wholesale transaction because MSN remains liable for all retail functions provided to MSN's customers regardless of who MSN hires as its agent to provide those retail functions.

Moreover, under the commenters' theory regarding the retail nature of Qwest's bulk sale of DSL transport services to MSN, there is no "retail rate" to which an "avoided cost" discount could be applied under Section 251(c)(4). Qwest's tariff rate for bulk DSL transport is not a "retail rate" because it covers only the bulk DSL transport services. Qwest's rates for the marketing, billing and collection services Qwest provides for MSN's Internet services – which are the bases for the commenters' claim that Qwest's sale of bulk DSL transport is a retail transaction – are covered in separate contracts. There is no "retail rate" that covers the bulk DSL transport services as well as the marketing, sales, billing and collection services for MSN's Internet access services. Nor is it likely that such a "rate" could be derived.

It would not be appropriate to characterize Qwest's tariff rate for bulk DSL transport as a "retail rate" because it does not cover all of the retail support services that Qwest provides under separate contracts. Applying an "avoided cost" wholesale discount


to Qwest's tariff rate for bulk DSL transport services would result in consumers paying more for high speed Internet services they purchase from ISPs, and, by doing so, slow the widespread deployment of these services to all Americans. This is so for the simple reason that applying wholesale discount to bulk DSL transport services would effectively undermine the incentive that carriers otherwise would have to offer ISPs the lowest possible price for these services in order to promote the widespread adoption of high speed Internet services by consumers. In other words, carriers simply cannot afford to offer ISPs as low a price as they would otherwise if they know that they are at risk of automatically having to sell those services at a further discount of 20 percent (or more). Consequently, ISPs will pay higher prices for bulk DSL transport services that ultimately will be passed through to consumers.

In addition, it simply makes no policy sense to create a situation in which ISPs that are affiliated with a carrier can purchase bulk DSL transport services for resale at a lower price than ISPs who are not affiliated with a carrier. Both will perform the same functions. Both will purchase the service, resell it to retail customers and be responsible for retail functions. Yet the ISP that is not affiliated with a carrier will be put in the untenable position of having an artificial, regulatorily created cost disadvantage compared to its competitor.

**Conclusion**

The Commission should issue the declaratory ruling requested by Qwest.

Respectfully submitted,

  
James G. Pachulski

Michael E. Glover  
Edward Shakin  
Of Counsel

1515 North Courthouse Road  
Suite 500  
Arlington, VA 22201

TechNet Law Group, P.C.  
1100 New York Ave., NW  
Suite 365  
Washington, DC 20005  
(202) 589-0120

Attorney for the  
Verizon telephone companies

May 30, 2002

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Midwest Incorporated d/b/a Verizon Midwest  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.